

## GENAUDIO - AstoundSound End User License Agreement (EULA)

By launching this demo, YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND THE TERMS AND CONDITIONS SET FORTH HEREIN AND AGREE TO BE BOUND HEREBY. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, INSTALLATION OF THE GENAUDIO TECHNOLOGY WILL NOT BE POSSIBLE.

WHEREAS, GenAudio, Inc., a Colorado corporation (“GENAUDIO”), has developed certain unique audio processing technology for use in connection with the proprietary audio and motion technologies of Firelight Technologies Pty Ltd. (“Firelight”), which allow users to develop interactive games for specified platforms;

WHEREAS, Licensee has an interest in evaluating such GENAUDIO technology and, depending on the outcome of such evaluation, potentially developing interactive games with it for distribution to third party users of such games; and

WHEREAS, GENAUDIO desires to license its technology to Licensee, and Licensee desires to license such technology from GENAUDIO, all pursuant to the terms and conditions described herein.

NOW THEREFORE, in consideration of the mutual covenants provided for herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

### 1. DEFINITIONS

1.1 “Commercial Use License” means a license granted pursuant to Section 2.2 of this Agreement in respect of the GENAUDIO Technology to use such technology in connection with the development of a Licensee Developed Game, the integration of the GENAUDIO Technology into a specific Licensee Developed Game and the distribution of such game with such technology so integrated.

1.2 “Documentation” means all technical, reference and installation manuals, user guides, published performance specifications and other written documentation provided by GENAUDIO generally to its customers with respect to the GENAUDIO Technology, along with any modifications and updates thereto.

1.3 “Evaluation License” means a license granted pursuant to Section 2.1 to evaluate the GENAUDIO Technology for possible use in connection with the development and distribution of a Licensee Developed Game with such technology integrated therein.

1.4 “Game Player” means any third party who purchases or otherwise obtains a copy of a Licensed Developed Game and plays it.

1.5 “GENAUDIO Deployment Software” means the GENAUDIO libraries and header files as well as related resources and configuration files with respect to the GENAUDIO Technology, in object code only, that are required to be incorporated into a Licensee Developed Game for the intended use of the GENAUDIO Technology.

1.6 “GENAUDIO Technology” means GENAUDIO’s proprietary audio technology, commonly referred to as AstoundSound, which allows Licensees to apply static and dynamic 3-D audio localization of one or more simultaneous sound sources and includes the GENAUDIO Deployment Software and the Documentation.

1.7. “Licensee” means the individual or entity executing this Agreement and who uses the GENAUDIO Technology for purposes of evaluating such technology and/or developing a Licensee Developed Game that incorporates it.

1.8 “Licensee Developed Game” means an interactive software game developed by or on behalf of Licensee on the Licensee Platform.

1.9 “Licensee Platform” means the platform on which a Licensee Developed Game is developed and released as set forth in the definitive purchase order for the GENAUDIO Technology (e.g. Windows, Mac, Xbox360 or Xbox One, PlayStation 3 or PlayStation 4, Wii or Wii U and any other consoles, including next generation consoles of the foregoing).

## 2. LICENSE GRANTS; OWNERSHIP

2.1 Evaluation License. Subject to the terms and conditions of this Agreement, GENAUDIO hereby grants to Licensee a worldwide, nonexclusive, non-transferable, non-sublicensable right and license to install, use and operate the GENAUDIO Technology in accordance with the Documentation for a sixty (60) day period, or such other period as may be adjusted pursuant to Firelight’s and GENAUDIO’s standard evaluation and usage policies and agreed to by GENAUDIO, solely for Licensee’s internal evaluation, prototyping and testing of the GENAUDIO Technology. This Evaluation License includes the right to make a reasonable number of copies of the GENAUDIO Technology for the purposes described above but does not grant any right to use the GENAUDIO Technology to develop any Licensee Developed Games or to incorporate GENAUDIO Technology into any Licensee Developed Games and distribute such games with the GENAUDIO Technology so incorporated.

2.2 Commercial Use License. If at any time during or after the Term of this Agreement, Licensee determines that Licensee wishes to develop a License Developed Game using the GENAUDIO Technology and integrate the GENAUDIO Technology into one or more Licensee Developed Games, then, subject to the terms and conditions of this Agreement and payment of all fees associated with the definitive purchase order for the GENAUDIO Technology, GENAUDIO hereby grants to Licensee a worldwide, paid-up, nonexclusive, non-transferable, non-sublicensable, non-refundable right and license to: (a) install, use and operate the GENAUDIO Technology in accordance with the Documentation for Licensee’s development of the Licensee Title; (b) use and reproduce the GENAUDIO Deployment Software for the purpose of and to the extent required to test, demonstrate and support the Licensee Developed Game; and (c) make, have manufactured (by third party contractors), promote, display, advertise, provide previews and reviews on all media, publish, distribute, license and offer to license the Licensee Developed Game. This Commercial Use License includes the right to make a reasonable number of copies of the GENAUDIO Technology for the purposes described above.

2.3 Ownership. Notwithstanding anything else in this Agreement, GENAUDIO and its third party licensors retain (a) all title to, and, except as expressly licensed herein, all rights to the GENAUDIO Technology, all copies and derivative works thereof (by whomever developed) and all related documentation and materials, and (b) all copyrights, patent rights, trade secret rights and other proprietary rights in the GENAUDIO Technology. Except for GENAUDIO’s retained rights in the underlying GENAUDIO Technology (including without limitation the GENAUDIO Deployment Software) as set forth and licensed to Licensee herein, Licensee shall own the copyright and all other intellectual property rights to the Licensee Developed Game.

## 3. LICENSE RESTRICTIONS

3.1 Access. Download access to the GENAUDIO Technology for purposes of

development, integration and distribution of the GENAUDIO Technology pursuant to a Commercial Use License will be delivered after payment of the applicable fees in full.

3.2 Restrictions on Use. Except as expressly provided herein, Licensee agrees not to (a) produce hard copy printed output of data from the GENAUDIO Technology for reports and notes other than solely for reference purposes in connection with its own internal business, and which may not be published or supplied to any third party; (b) expose any underlying programming interfaces of the GENAUDIO Technology in the Licensee Developed Game; (c) include any documentation relating to the GENAUDIO Technology and sample application elements of the GENAUDIO Technology with the Licensee Developed Game; (d) remove or alter any patent markings, copyrights or other proprietary notices from the GENAUDIO Technology, including the Documentation; (e) disassemble, decompile or otherwise reverse engineer the GENAUDIO Technology or otherwise attempt to learn the source code, or digital signal processing waveform responses underlying the GENAUDIO Technology; (f) rent, lease or otherwise provide temporary access to the GENAUDIO Technology otherwise than as specifically authorized herein; (g) copy, alter or modify the GENAUDIO Technology otherwise than as specifically authorized herein; or (h) authorize or allow others to do any of the foregoing. Licensee may only disclose the GENAUDIO Technology to employees or third party contractors who have a need to know for purposes of assisting Licensee with the internal evaluation, prototyping, testing, integration, manufacturing or distribution of the GENAUDIO Technology and who have agreed to be bound by the restrictions set forth herein. Licensee shall be liable for any breach of this Agreement and/or the restrictions respecting the use and disclose of the GENAUDIO Technology contained herein as applied to such employees or third party contractors.

3.3 Notice. Licensee agrees to promptly notify GENAUDIO if Licensee becomes aware of any unauthorized use of the whole or any part of the GENAUDIO Technology, including the Documentation, by any third party.

3.4 Open Source Components. The GENAUDIO Technology does not contain any open source components which are not licensed under the terms of this Agreement.

#### 4. LICENSEE OBLIGATIONS

4.1 Credit. Licensee will be required to provide a game credit for the GENAUDIO Technology using its tradename "AstoundSound®" in each and every Licensee Developed Game.

#### 5. TRADEMARK LICENSE

5.1 Each of GENAUDIO and Licensee owns the trademarks, logos and trade names (collectively "Marks") for their respective products and/or services, including, but not limited to the Licensee Developed Game and the GENAUDIO Technology. No license to use the GENAUDIO Marks is granted under this Agreement other than in connection with Licensee's compliance with Section 4.1 and no license to use any Licensee Marks is granted under this Agreement other than in connection with GENAUDIO's rights under Section 4.2.

#### 6. SUPPORT

6.1 During the term of the Agreement, the reseller of the GENAUDIO Technology will provide first tier support and GENAUDIO may provide additional support. All such support will be provided in accordance with the then current applicable conditions set forth on, subject to the terms and conditions set forth herein.

Licensee assumes all risks arising from Licensee's failure to implement updates and any other corrections released by GENAUDIO.

## 7. PROPRIETARY INFORMATION

7.1 Definition. Licensee acknowledges that pursuant to this Agreement it will be receiving information which is proprietary and confidential to GENAUDIO and, in the case of the GENAUDIO Technology, is a confidential trade secret and valuable asset of GENAUDIO which may (i) be the subject of one or more patent applications and/ or be a confidential trade secret and valuable asset of GENAUDIO which it wishes to protect from public disclosure ("Proprietary Information").

7.2 Exclusions. Each party acknowledges that the following will not be considered Proprietary Information for the purposes of this Agreement: (a) Proprietary Information which is publicly available in the public domain at the time it is communicated to Licensee by GENAUDIO; (b) proprietary Information which is or becomes publicly available or public domain information through no fault of Licensee subsequent to the time it is communicated to Licensee by GENAUDIO; (c) proprietary Information which is in Licensee's possession free of any obligation of confidence to GENAUDIO at the time it is communicated to Licensee by GENAUDIO; (d) proprietary Information which is rightfully communicated to Licensee free of any obligation of confidence subsequent to the time it is communicated to Licensee by GENAUDIO; (e) proprietary Information which was independently developed by Licensee without use of GENAUDIO's Proprietary Information; or (f) is disclosed pursuant to law or to the order, requirement or request of a court of government authority; provided, however, that if any Proprietary Information is subject to disclosure pursuant to Section 7.2(f), Licensee shall (i) provide GENAUDIO with sufficient notice of same prior to disclosure such that GENAUDIO may seek a protective or other order limiting the disclosure of GENAUDIO's Proprietary Information; (ii) cooperate and assist GENAUDIO in seeking any such protection for the disclosure of its Proprietary Information (at GENAUDIO's expense), and (iii) only disclose such of GENAUDIO's Proprietary Information as is reasonably required to comply with such law or order, requirement or request of a court or governmental authority.

7.3 Restrictive Use Conditions. Licensee (a) will hold such Proprietary Information in confidence and will not disclose it, except to its employees, officers or authorized representatives and those of its authorized sub-licensees with a need to know for purposes of performing their duties, who are similarly bound to hold the Proprietary Information in confidence and, with respect to the GENAUDIO Technology, who have been given an individual access code by GENAUDIO or Firelight, (b) shall prevent inadvertent or unauthorized disclosure or dissemination of any Proprietary Information, and (c) agrees to take appropriate action with its employees, officers and authorized representatives and those of its authorized sub-licensees to satisfy its obligations under this Agreement with respect to the use, copying, modification, protection and security of the Proprietary Information.

## 8. WARRANTY AND DISCLAIMER

8.1 Warranty. GENAUDIO warrants that it has the right and authority to grant the rights granted to Licensee hereunder in the GENAUDIO Technology on the Licensee Platform. GENAUDIO warrants that it is under no contractual or other legal obligation which would interfere in any way with the full, prompt, and complete performance of its obligations pursuant to this Agreement.

8.2 As is, where is. EXCEPT AS SET FORTH IN SECTION 7.1, THE GENAUDIO TECHNOLOGY IS PROVIDED AS IS AND WHERE IS BY GENAUDIO AND IS ACCEPTED AS SUCH BY LICENSEE, (B) GENAUDIO DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES RELATING TO THE GENAUDIO TECHNOLOGY AND DOCUMENTATION, INCLUDING BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND NON-INFRINGEMENT. GENAUDIO DOES NOT WARRANT THAT THE GENAUDIO TECHNOLOGY OR DOCUMENTATION WILL MEET LICENSEE'S REQUIREMENTS, OR THAT THE OPERATION OF THE GENAUDIO TECHNOLOGY AND THE DOCUMENTATION WILL BE UNINTERRUPTED OR ERROR FREE. EXCEPT WITH RESPECT TO SECTION 9 BELOW, LICENSEE AGREES THAT GENAUDIO WILL NOT BE LIABLE FOR ANY DAMAGES THAT LICENSEE OR ITS END USERS OR ITS GAME PLAYERS MAY INCUR ARISING OUT OF THE USE OR INABILITY TO USE THE GENAUDIO TECHNOLOGY OR LICENSEE DEVELOPED GAME.

## 9. LIMITATION OF LIABILITY

9.1 DAMAGES LIMITATIONS. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, AND EXCEPT IN RELATION TO BREACHES OF GENAUDIO'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, RELIANCE OR CONSEQUENTIAL DAMAGES, WHETHER FORESEEABLE OR NOT, INCLUDING, BUT NOT LIMITED TO, DAMAGE OR LOSS OF PROPERTY, EQUIPMENT, INFORMATION OR DATA, LOSS OF PROFITS, REVENUE OR GOODWILL OR COST OF REPLACEMENT SERVICES OCCASIONED BY ANY DEFECT IN THE GENAUDIO TECHNOLOGY, THE INABILITY TO USE SERVICES PROVIDED HEREUNDER OR ANY OTHER CAUSE WHATSOEVER WITH RESPECT TO THE GENAUDIO TECHNOLOGY OR THIS AGREEMENT, REGARDLESS OF THEORY OF LIABILITY. THIS LIMITATION WILL APPLY EVEN IF THE OTHER PARTY HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

9.2 DAMAGES CAP. IN NO EVENT SHALL GENAUDIO'S LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT OF FEES DUE FROM LICENSEE TO GENAUDIO FOR THE RELEVANT LICENSEE DEVELOPED GAME, AS APPLICABLE, DURING THE TWELVE (12) MONTHS PRIOR TO THE OCCURRENCE GIVING RISE TO SUCH CLAIM.

## 10. TERM AND TERMINATION

10.1 Term. Unless terminated earlier as provided herein, this Agreement shall commence upon acceptance of this Agreement and shall continue (i) until the evaluation period set forth in Section 2.1 has expired for an Evaluation License and (ii) for an unlimited duration for a Commercial Use License. For Evaluation Licenses, the GENAUDIO Technology includes a "time bomb" such that upon the expiration of such period, the GENAUDIO Technology shall automatically disable itself and shall no longer be able to be used by Licensee for any purpose.

10.2 Termination. GENAUDIO may terminate this Agreement immediately if the Licensee materially breaches this Agreement.

10.3 Effect of Termination/Expiration. Except as expressly set forth in Section 10.4, upon the expiration or termination of this Agreement or any of the licenses granted hereunder: (a) all of Licensee's rights hereunder shall terminate; and (b) within fifteen

(15) days of the expiration or termination date Licensee shall, at its own expense, and at GENAUDIO's sole option, either return all copies of the GENAUDIO Technology, Documentation and GENAUDIO Proprietary Information in its possession or control, or, shall destroy all copies of the GENAUDIO Technology, Documentation and GENAUDIO Proprietary Information in its possession or control and certify such destruction.

10.4 Survival. Section 1 (Definitions), Section 2.3 (Ownership), Section 3.2 (Restrictions on Use), Section 3.3 (Notice), Section 7 (Proprietary Information), Section 8 (Warranty and Disclaimer), Section 9 (Limitation of Liability), Section 10.3 (Effect of Termination), this Section 10.4 (Survival), Section 11 (Miscellaneous) shall survive the termination or expiration of this Agreement in accordance with their terms.

## 11. MISCELLANEOUS

11.1 Amendments. GENAUDIO may amend this Agreement at any time. Such amendments will become effective and enforceable against Licensee upon express acceptance of same either through the execution of a written instrument to that effect or the acceptance of the new terms through the GENAUDIO Technology installation process.

11.2 Waiver. Any failure to enforce by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not be deemed or construed to be a waiver of such term or condition or any subsequent breach thereof.

11.3 Assignment. This Agreement or any licenses granted hereunder may not be assigned or sublicensed by Licensee in whole or in part other than as provided hereunder (by contract, merger, operation of law or otherwise) without the prior written consent of GENAUDIO, such consent not to be unreasonably withheld or delayed. GENAUDIO may assign this Agreement with notice to Licensee in the event of a merger, acquisition or similar corporate activity provided that the surviving entity agrees to be bound by the terms of this Agreement. This Agreement shall be binding upon and inure for the benefit of the successors in title of the parties hereto.

11.4 Export. Licensee agrees to comply with all export laws, restrictions, national security controls and regulations of the United States or other applicable national or foreign agency or authority, and not to export or re-export, or allow the export or re-export of any proprietary information or any copy or direct product thereof in violation of any such restrictions, laws or regulations.

11.5 Independent Contractors. Each party will act at all times as an independent contractor and will have no right or authority to act on behalf of, create any obligation for, or bind the other party in any way. Nothing in this Agreement will be deemed to create a partnership or joint venture between the parties.

11.6 Governing Law. This Agreement will be governed by and construed under the laws of the State of Colorado and the laws of the United States applicable therein and the parties hereto submit to the exclusive jurisdiction of the courts of the State of Colorado.

11.7 Attorneys Fees. In the event of any action, suit or proceeding hereunder, the prevailing party shall be entitled to recover its reasonable attorneys' fees, in addition to all costs of such action, suit or proceeding from the non-prevailing party. The court or tribunal, as applicable, shall determine who is the prevailing party whether or not such action, suit or proceeding proceeds to final adjudication.

11.8 Amendments. Except as set forth in Section 11.1, this Agreement shall not be modified or amended except in writing and signed by both parties.

\* \* \* \*